The Monstrous Breakdown of The Criminal Law

(By Carl Snyder, in Collier's.)

Some measure of the utter failure of criminal justice in this country may be gathered from the following fact:

A simple calculation suffices to show that:

There are more than 100,000 murderers now living in the United States of whom more than three-fourths have never been imprisoned for their crimes.

In the last issue of Collier's I endeavored to show that the estimate of 8,000 to 9,000 murders annually in this country was under rather than above the mark. This has been true for more than 15 years.

The age of the average murderer is under 30, and probably not over 25. The average expectation of life for a person alive at 25 is 38 years. The majority of all murderers are professional criminals, which means that they are for the most part tuberculitic, syphilitic, or otherwise diseased. A considerable part do not outlive their crimes 10 years.

If we take 15 years as an average for the whole number, then, at the rate of above 8,000 murders per year, the estimate of above 100,000 now living is low. Not many men kill more than one person in their lifetime.

Now as to the failure of the law.

Last year in New York city the coroner reported 185 homicides; the grand jury considered 119, and there were 45 convictions—one in four.

In 10 years 1,161 murders have been investigated by the grand juries—probably but little more than half of the actual number done—and there have been 382 convictions. Say one in four or five.

In Chicago last year there were 202 murders reported; one was hanged, 15 sent to prison, 186 went scot free. This is nearly nine out of ten.

Yet the courts of New York and Chicago represent a high average far above the rest of the country.

In Texas the editor of the Journal of the American Institute of Criminal Law estimated there have been over 2,000 murders in the last two years. There were 1,048 indictments.

In Dallas county alone there were 56 murders in one year, 23 indictments, one conviction—sentence, five years.

In Harris county 57 murders; two hanged.

In Tarrant county 40 murders; none hanged.

And these are fair samples. In the state of Alabama, for the two years of 1909-10, 630 murder cases were tried; 27 death sentences—one in 23. About all the hangings, of course, were of negroes.

For the whole country 8,975 murders in 1910; in 1909, 8,103. Hanged for murder in 1910, 94. Say one in 90.

Is there any need to say that these are conditions which obtain in no other civilized nation in the world? That they are the result of conditions for which we, in the United States, are alone to blame is painfully evident from a simple consideration.

If we step across the line into Canada we find that the number of murders per million of population has there dropped six-sevenths. There the average is but little higher than in England, which in turn is only one-tenth that of the United States.

The suggestion, therefore, that the atrocious conditions prevailing in this country are those of a newly settled country with a large influx of foreign population, and so forth, is simply a miserable pretense. Canada has a large foreign population; it is much newer than the United States; and for the rest, as I pointed out in the article in the last issue of Collier's, our foreign-born population is far more orderly and less murderous than the native-born population.

What, then, is the trouble?

Bench and bar, the ablest judges and jurists of the country, are practically unanimous in ascribing our failure to the conduct of the courts and our antiquated and imbecile methods of procedure. These have been denounced by judges and jurists alike in terms that from the pen of a layman would be decried as incendiary. I may quote a few:

"It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization and that the prevalence of crime and fraud which here is greatly in excess of that of European countries is due largely to the failure of the law and its administration to bring criminals to justice."

This is from the president of the United States. It is from one of a long list of admirable addresses and messages in which he has endeavored to awaken the country to the frightful perversion of justice which here exists.

Before the Minnesota Bar association Justice Charles F. Amidon said:

"Our administration of the criminal law has broken down. It is a fair statement of the administration of the criminal law in America that if a man has the means to employ counsel so as 'to make a fight,' as we say, in the majority of cases he can escape punishment for crime."

Dean Lawson of the University of Missouri:

"Crime is triumphant for the reason that it has become a rule of action with our appellate courts that the penalties consequent upon the commission of a great crime can be escaped by a criminal because of an unintentional committal by the prosecuting attorney of an error of procedure."

Hon. Everett P. Wheeler of the New York bar, in a report to the American Bar association:

"The system under which the law is administered in most parts of the country is a hundred years behind the age."

Curtis H. Lindley, president of the Bar association of San Francisco and of the California State Bar association:

"The law is an archaic and petrified system of general law framed on 17th century ideas."

Federal Justice Emory Speer of Georgia:

"Today it is almost impossible for a judge who feels his nature outraged by crime, even the most heinous, so to conduct a trial as to avoid errors in the construction of certain baleful statutes which ought to be swept from the pages of our legislation."

These are eminent opinions. Now what are the facts? Twenty-four years ago the abuses here under view had already become so flagrant that a committee was appointed by the American Bar association to consider the matter, and that committee reported that on the average new trials were granted in 46 per cent of all the cases brought under review in appellate courts in this country.

Consider for a moment what this means. It means that out of all the hundreds of thousands of actions, civil and criminal, brought in the courts of the United States, every other one roughly, of the cases which were appealed were reversed. In other words, a defeated attorney had merely to make out a bill of exceptions and errors and carry the case to a higher court, and it was a nearly even chance that the verdict or judgment of the lower court would be upset.

Supposing now, what for the rest of it is inconceivable, that these reversals represented a just conclusion in each case, the meaning of these reversals would have been that on the average one-half of all the trials in all the states of the whole country were in their outcome unjust and wrong!

Could there be a more monstrous impeachment of the intelligence, the honor and the probity of our primary courts?

Whatever may be the degree of corruption of these courts, whatever may be the sinister influences, subtle and intangible, which often influence their decisions, we know, for the most part, they constitute a body of men of relatively high character, as decent and honorable as the average man. The implied libel, then, upon the primary bench was in reality directed toward a system, and not against the men

The same report of 24 years ago found further that in 60 per cent of all appeals the cause turned wholly upon questions of pleading and practice, and in only 40 per cent of the cases was it a question of the right or justice of the verdict. In other words, it was simply a question of miserable technicalities.

These were the conditions in 1887, as described by a body of high-minded lawyers, reporting to their own association. Now witness the splendid results of the reforms they endeavored to introduce.

In the address of Judge Amidon, already quoted from, that worthy said: "I have recently looked into this subject with respect to seven representative states of the union and find that the conditions reported to the Bar association have not improved, and, on the contrary, have in some respects grown worse."

Judge Amidon added: "For the purpose of comparison as to whether this condition is a necessary evil, I have examined the law records of England for the period from 1890 to 1900, and I find that all of the cases that were brought under review on appeal in that country, new trials were granted in less than three and a half per cent."

In the same tenor, Hon. E. J. McDermott, speaking before the American Political Science association in 1910, stated that: "The Court of Appeals in England, acting for 32,000,000 people, grants, on the average, only about 12 new trials per year."

So far as the Court of Criminal Appeal is concerned, it is not permitted by the law of England to grant a new trial in any case whatever. Reversal of the verdicts of a lower court means that the conviction is quashed and a judgment of acquittal is entered. It is needless to say that in England such a reversal is extremely rare.

In the state of Kentucky, Mr. McDermott found that in six months, of 38 cases appealed by defendenats convicted of crime, 17 were reversed—nearly one half. Of these 38 cases, 16 were for murder and six were reversed. In only one of the 10 cases affirmed was the penalty death.

In the state of Texas conditions have become so bad that at a convention of prosecuting attorneys the president of the association recently stated that 51 per cent of the cases appealed to the court of criminal appeals were reversed.

And here is a fair sample of the cases:

One Walter Hickey shot and killed Tom Dickson, near Haskell, Texas in 1903. He was tried no less than six times. Two of the trials resulted in disagreements of the jury; in the other four, convictions were obtained. Three times the life sentence was imposed, and once a term of imprisonment for 22 years. Each time the court of criminal appeals reversed the conviction, and finally the prosecuting attorney gave it up as hopeless, and said that it appeared to be impossible to conduct a trial in such a way as to meet the requirements of the reviewing court.

And here is another:

One Grantham was convicted of burglary. The indictment charged that the crime was committed in a certain house occupied by six persons ,named therein. But the evidence disclosed the fact that this house was occupied by only the five of the persons designated. The court of appeals held that this variance between the allegation and the proof was fatal, and the conviction was therefore reversed!

Is it any wonder that under such conditions "Texas justice" should become a byword and that this judicialial scandal should be a subject even of party platforms, and that in two messages to the legislature Governor Campbell should urge a sweeping reform? In one of these messages Governor Campbell said.

"The people and the press of the state are protesting against existing conditions and have the right to expect relief at the hands of your honorable bodies. The technicalities and high sounding, ornate, literary nonsense now obstructing the courts, encouraging crime, delaying civil and criminal trials and defeating justice, should be swept away by some common sense legislation. With this done, the bar and courts could be reduced, instead of increased, and criminals could be more speedily and certainly punished."

And yet the legislation demanded by Governor Campbell failed of passage.

This is one state. Here another: Former Prosecuting Atorney C. B. Verner of Tuscaloosa, Alabama, in an address before the Alabama Bar association, said:

"I have examined about 75 murder cases that found their way to the supreme court. More than half of these cases were reversed, and not a single one of them on any matter that went into the merits of the case, and very few of them upon any matter that could have influenced the jury in reaching a verdict."

Consider now a few of the causes upon which appeals have been granted.

In South Carolina an indictment

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